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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd May 2009

No. 4566—li/1(BH)-55/2001-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th April 2009 in Industrial Disputes Case No. 263/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Sapua-Badajore Irrigation Division, At Satmil, Post Dudurkote, District Dhenkanal and its workman Shri Ghanashyam Moharana was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE
IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 263 OF 2008
Dated the 15th April 2009

Present :

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Executive Engineer, . . . First Party—Management
Sapua-Badajore Irrigation Division,
At Satmil, P.O. Dudurkote,
Dist. Dhenkanal.

And

Shri Ghanashyam Moharana, . . . Second Party—Workman
S/o Biranchi Moharana,
At/P.O. Kangula, Dist. Angul.

Appearances :

| | |
|--|----------------------------------|
| None | . . . For First Party—Management |
| Shri S. B. Mishra and Shri T. Lenka, Advocates. | . . . For Second Party—Workman |

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 16541—li/1(BH)-55/2001-LE., dated the 27th November 2001 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008.

“Whether the termination/retrenchment of services of Shri Ghanashyam Moharana (Amin) with effect from the 31st July 2000 by the management of Executive Engineer, Sapua-Badajore Irrigation Division, Satmil, Dhenkanal/Asst. Engineer, Sapua-Badajore Subdivision No. I is legal and/or justified ? If not, to what relief Shri Moharana, is entitled ?”

2. The case of the second party-workman in short is that he was working as a Amin under the first party-management being engaged in its Sapua-Badajore Irrigation Division since 1990 and continued as such up to the 31st July 2000 when he was retrenched/terminated from his service along with other workmen. It is alleged that though subsequently the other workmen who were working with him were taken back into employment by the management, yet his case was not considered despite the fact that during the period of his employment he had rendered continuous service under the management. It is further alleged that even the management has not paid his wages from the 1st October 1998 till the 31st July 2000 on the plea of non-availability of funds. It is asserted that while terminating his service neither he was given any written notice/nor notice pay and retrenchment compensation and for no fault of his he was removed from employment. It is stated that during the period of his employment he was never charge sheeted for any misconduct. Since the date of his termination, the workman is unemployed, he has prayed for his reinstatement in service with full back wages.

3. The management entered appearance and filed its written statement stating therein *inter alia* that the workman was never posted to work either in regular establishment, work charged establishment or as an N.M.R. under it and therefore, the question of termination of his service does not arise at all. It is the specific case of the management that the workman might have been engaged by the contractor, who was asked for preparation of survey report, measurement of acquired land, etc. and as such, the plea of his non-receipt of salary for the period from the 1st October 1998 to the 31st July 2000 is not correct. It is stated that since the workman was not engaged as a departmental worker under the management, question of complying with the provisions of the Industrial Disputes Act and the question of framing of charge/conducting enquiry become redundant.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the termination/retrenchment of services of Shri Ghanashyam Moharana (Amin) with effect from the 31st July 2000 by the management of Executive Engineer, Sapua-Badajore Irrigation Division, Satmil, Dhenkanal/Asst. Engineer, Sapua-Badajore Subdivision No. I is legal and/or justified ?
- (ii) If not, to what relief Shri Moharana is entitled ?”

5. During hearing of the case the management did not appear nor took any step as a result of which it was set *ex parte* vide Order No. 13, dated the 2nd June 2004. The workman thereafter submitted his evidence on affidavit and proved 15 sheets of survey reports and xerox copy of a map which have been marked as Exts. 1 series and 2 respectively.

6. It is being the settled principle of law that in a case of this nature, onus lies upon the claimant to prove that he had worked continuously for a period of 240 days preceding the date of his termination of service, it is to be seen first as to whether such burden has been satisfactorily discharged by the workman in order to claim protection of the provisions of the Industrial Disputes Act. In his affidavit evidence though the workman has stated to have worked under the management continuously for the period from 1990 till the 31st July 2000, yet not a single documentary proof is filed by him to corroborate his aforesaid version. The documents exhibited in the case and marked as Exts. 1 series and Ext. 2, which are xerox copies of survey reports and xerox copy of a map do not reveal the fact of his continuous engagement under the management so as to extend him the benefit of the provisions of the Industrial Disputes Act. The affidavit filed being a self-serving document, it was incumbent for the workman to bring on record cogent evidence, i.e., the vouchers showing payments made to him, the attendance register, etc. or in the alternative it should have been called for from the possession of the management to establish the fact of his continuous engagement under the management. The workman having failed to establish the aforesaid aspect, his claim that he was terminated from service by the management w.e.f. the 31st July 2000 is found to be not tenable in the eye of law.

7. In the result, the termination/retrenchment of services of the workman w.e.f. the 31st July 2000 by the management is found to be neither illegal nor unjustified and accordingly, it is held that the workman is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
15-4-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
15-4-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government